

DEPARTMENT OF FOOD AND

A.G. KAWAMURA, Secretary

Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828-1812
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DMS NOTICE
QC -08-02



January 11, 2008

Discard: June 2008

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Correspondence Interpreting Section 13300 Business and Professions Code

The attached correspondence answers questions relating to Section 13300 of the California Business and Professions Code and is provided for information purposes.

Sincerely,

A handwritten signature in blue ink, reading "Edmund E. Williams".

Edmund E. Williams
Acting Director

Enclosures

cc: QC Special Investigators
Kevin Masuhara, Director, County Liaison Office



BELL, ROSENBERG & HUGHES LLP

December 17, 2007

Via First Class Mail

Dennis R. Johannes
Director, Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828-1812

Re: Questions regarding application of Business and Professions Code § 13300

Dear Mr. Johannes:

I represent a client engaged in retail sales of lumber products and building materials. We are aware of the recent activation of the California Business and Professions Code Section 13300 on January 1, 2007 of this year, but are uncertain if all phases of our client's business operations currently comply with the statute. After closely reviewing the revised language of the statute and your recent Division of Measurement Standards Notice QC-07-02, there are two situations about which we have additional questions and request your input.

First, our client regularly takes orders over the telephone. Customers call in to order building materials, such as dimensioned lumber and plywood. A clerk enters the order into a computer system which retrieves pricing information for the requested materials. A printed invoice is prepared and the price is verbally quoted to the customer. A receipt is later sent to the customer.

Section 13300(a) provides that "[t]he operator of a business establishment that uses a point-of-sale system to sell goods or services to consumers shall ensure that the price of each good or service to be paid by the consumer is conspicuously displayed to the consumer at the time that the price is interpreted by the system..."

Section 13300(b) defines a point-of-sale system as "any computer or electronic system used by a retail establishment such as, but not limited to, Universal Product Code Scanners, price lookup codes, or an electronic price lookup system as a means for determining the price of the item being purchased by a consumer."

Based on our review of these statute sections, there does not appear to be an exception for a telephone order, when the customer is not physically present in at the point-of-sale location to

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view the price as interpreted by the point-of-sale system. Will the verbal quotation of a price over the phone, or the subsequent mailing of an invoice to the customer satisfy the statutory requirements of Section 13300?

The second situation involves orders taken at the lumber counter when the customer is physically present in the store. The customer's order often includes items that are scanned using UPC codes, and items that are verbally requested, such as dimensioned lumber, which will later be retrieved from the yard. For the requested items, the clerk enters the item description into the computer and a price is retrieved. The customer's order is totaled and a printed invoice is then generated. If the invoice is presented to the customer for his review before payment is tendered, does this satisfy the requirements of the new law, that is, will the presentation of the total via paper—rather than by electronic display—be an acceptable act under the new statute.

I thank you in advance for your consideration of these questions. We look forward to your response. Please feel free to contact me via telephone if it is more convenient.

Very truly yours,

BEEL ROSENBERG & HUGHES LLP

Doug McManamon

DMM:mdb
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DEPARTMENT OF FOOD AND AGRICULTURE

A.G. KAWAMURA, Secretary

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January 8, 2008

Doug McManamon
Bell, Rosenberg & Hughes LLP
1300 Clay St., Suite 1000
Oakland, CA 94612

Dear Mr. McManamon:

I have been asked to respond to your December 17, 2007 letter addressed to Dennis Johannes.

In your letter you refer to Section 13300 of Article 1, Chapter 13 of the California Business and Professions Code. This is the California Legislature's response to complaints regarding lack of price verification opportunities in many business establishments and it requires customers be provided with pricing information before they pay for goods or services.

Two terms are used in this Section: "point-of-sale systems", and "checkout systems", however, only the checkout system is referred to when determining the positioning for the required customer indicator. By distinguishing between these it would appear the intent was then not to require a customer indicator at a point of sale system if it has no checkout system.

Retail establishments often have point-of-sale systems (POS) without checkouts, sometimes called service desks or customer counters, which are used to inform customers of item availability and prices, to order items, for requested items to be retrieved or declined, and for preparing invoices for payment at a separate location in the store. If the customer at the POS counter decides on a particular item, receives a printed invoice or itemization before going to the "checkout counter" to pay for the purchases, we believe that this POS counter is in compliance with the statute.

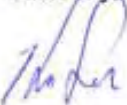
I encourage that, whenever possible, even customer POS counters provide customer access to a price display, whether or not the customer has decided to make the purchase, or the store has the item in stock. This can only help put customers and retailers in a better position to assist in ensuring the correct prices are charged.

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throughout the system. This, however, probably goes beyond what is enforceable in the section since the customer is selecting materials that will only be paid for elsewhere after the customer agrees to accept the items and the prices.

If you have any additional questions or comments, feel free to contact me directly.

Sincerely,



Ken Lake
Measurement Compliance Program Supervisor,
Division of Measurement Standards,
(916) 229-3047
klake@cdfa.ca.gov

cc: Kevin Masuhara
QC staff
County Sealers
DMS Notice